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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No.63 of 1994
Date of decision: 12.03.2007

Commissioner of Income-Tax (Central), Ludhiana ...Petitioner

Versus

Sh.Pankaj Munjal, Rockman Cycle Industries, Ludhiana

...Respondent

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Yogesh Putney, Advocate for
Mr.S.K.Garg Narwana, Advocate for the Revenue.

Mr.Akshay Bhan, Advocate for the Assessee.

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RAJESH BINDAL, J.

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short, 'the Tribunal) arising out of its order dated 27.4.1993 in ITA No.765/Chandi/88 for the assessment year 1983-84:-

> "Whether on the facts and in the circumstances of the case, the I.T.A.T. was right in law in holding that interest paid on borrowed funds invested in a firm is deductible U/S 67(3) of the Income-Tax Act even when the firm has not done any business during the year and there was no share income/loss?

Briefly the facts, as evident from the statement of case are that the assessee claimed interest of Rs. 16,450/- paid to M/S Brij Mohan Lal Om Parkash as a deduction from business income. A part of the interest paid by the assessee was disallowed for the reason that the assessee did not derive the income from the money so borrowed and invested by him. The

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order of Assessing Officer was upheld in appeal by the Commissioner of Income-Tax (Appeals). However, the Tribunal accepted the contention of the assessee primary for the reason that two different views were available of different High Courts and in these circumstances one in favour of the assessee was accepted. Delhi and Madhya Pradesh High Courts in **Commissioner of Income-Tax, Delhi Vs. Madan Lal Jain (1982) 136 ITR 409** and in **Commissioner of Income-Tax Vs. Raja Vikramaditya Singh (1988) 169 ITR 60** had taken a view in favour of the assessee whereas Madras High Court in **Prem Nazir Vs. Commissioner of Income-Tax (1986) 159 ITR 182** had taken a view against the assessee. While re-iterating the submission, as were accepted by the Tribunal, learned counsel for the assessee submitted that even for the previous year claim of Rs. 6752/- on account of interest paid by the assessee to M/s Brij Mohan Lal Om Parkash was accepted as a deduction by the Assessing Officer and against that order no further proceedings were taken by the Revenue. The same is also noticed in the statement of the case. There being divergent opinion of different High Courts on the issue and the Tribunal having followed one in favour of the assessee; there being no justification on record for not challenging the order for previous assessment year where similar relief was granted to the assessee; the provision having now been deleted from the statute and still further the amount involved in the case being small, we respectfully following the view taken in Madan Lal Jain's and Raja Vikramaditya Singh's cases (supra), answer the question against the revenue and in favour of the assessee.

The reference is disposed of accordingly.

(Rajesh Bindal)
Judge

March 12 ,2007 **(M.M.Kumar)**
Pka **Judge**